

Agenda

Advisory Committee on Rules of Civil Procedure

April 25, 2018

4:00 to 6:00 p.m.

Scott M. Matheson Courthouse

450 South State Street

Judicial Council Room

Administrative Office of the Courts, Suite N31

Welcome and approval of minutes	Tab 1	Jonathan Hafen, Chair
Rule 4. Standards for electronic acceptance of service: Discussion of assignment to subcommittee.	Tab 2	Jonathan Hafen, Nancy Sylvester, Judge Andrew Stone, Justin Toth
Rule 5, Orders served by the court, New CJA Rule 4-511, Mandatory email address, and Rule 10, conforming amendments.	Tab 3	Nancy Sylvester and others
Legislative Updates: SB 188 (Rules 4(e), 11(a)(2), 55(b)(1)(D), 63(b)(1)), SB 171 (Rule 24), SB 92 (Rule 73)	Tab 4	Nancy Sylvester
Other business		Jonathan Hafen, Chair

Committee Webpage: <http://www.utcourts.gov/committees/civproc/>

Meeting Schedule:

May 23, 2018

June 27, 2018

September 26, 2018

October 24, 2018

November 28, 2018

Tab 1

**UTAH SUPREME COURT ADVISORY COMMITTEE
ON RULES OF CIVIL PROCEDURE**

Meeting Minutes March 28, 2018

PRESENT: Leslie Slauch (Chair Pro Tem), Judge Kate Toomey, Rod Andreason, Trystan Smith, Michael Petrogeorge, Susan Vogel, Katy Strand (Recording Secretary), Barbara Townsend, James Hunnicutt, Lauren DiFrancesco, Judge Andrew Stone, Heather Sneddon, Paul Stancil, , Timothy Pack, Judge Laura Scott, Justin Toth

EXCUSED: Jonathan Hafen, Lincoln Davies, Dawn Hautamaki, Judge Clay Stucki, Judge James Blanch, Judge Kent Holmberg

GUESTS: Commissioner Michelle Blomquist, Shane Bahr

STAFF: Nancy Sylvester

(1) WELCOME, APPROVAL OF MINUTES

Leslie Slauch welcomed everyone to the meeting and requested a motion on February minutes. Judge Kate Toomey moved to approve the minutes; Susan Vogel seconded the motion. The motion carried unanimously.

(2) RULE 109. AUTOMATIC TEMPORARY DOMESTIC ORDERS. NEW.

Commissioner Blomquist reported that the Divorce Procedures Subcommittee reviewed this committee’s proposed amendments and made further amendments in conformity. She said as long as there are no additional substantive (versus stylistic) changes, the subcommittee would approve them.

Susan Vogel expressed concern that the term “service” is not clear in terms of whether it falls under Rules 4 or 5. She proposed changing (d)(2) to state “on the respondent upon service, under rule 4, of the petition and summons or upon the respondent’s signing of an acceptance of service or stipulation to the petition. A copy of the domestic injunction shall be served with the petition and summons served under rule 4, and referenced in any acceptance of service or stipulation.” Mr. Slauch asked if this would mean any acceptance of service that does not reference the injunction would make it not binding. Judge Stone pointed out that there should be the same rule for all injunctions. Susan Vogel thought that service was important, but Judge Stone argued that notice would be proven by service, and that this would protect pro se litigants from having to pay for service.

Judge Stone proposed having the injunction go into effect upon Rule 65A notice. Commissioner Blomquist was concerned that a party should know about something before they can be held in contempt of court. Michael Petrogeorge was concerned that Rule 65A does not cover the correct parties. He proposed that the rule itself state notice of the injunction and not be tied to Rule 65A.

Susan Vogel was concerned about making sure that the parties understood what they had to do, and that notice and service may be confusing. Commissioner Blomquist proposed having a form or standing order signed by the judge which would provide notice. Judge Stone pointed out that notice does not have to be the actual document. A text stating what the injunction said would be enough. Heather Sneddon proposed requiring a copy of the rule similar to Rule 45.

Judge Toomey and Judge Stone argued that in order to hold someone in contempt there must be a hearing showing they knew of the order. Judge Toomey said notice alone would be sufficient. The law already governs what is notice. Judge Stone was concerned that there should be actual notice, not simply the fact that the rule exists, although judges will likely make decisions on a case-by-case basis. Jim Hunnicutt said in other states the injunction is in effect upon Rule 4 service. This concerned Judge Stone since, he said, people could attempt to avoid service because they know of the injunction. Heather Sneddon proposed using “actual notice of the injunction.” Judge Stone thought Rule 65A notice worked well, but that the injunction should be served with the summons and complaint. Judge Toomey and Michael Petrogeorge proposed adding a paragraph (e) so that the service would be separate from the effectiveness of the injunction. Judge Scott was concerned that there would be litigation about what notice was given; she proposed a requirement that a copy of the injunction be included for notice. Leslie Slaugh proposed that notice of the content be used in the rule. The committee was concerned about creating additional litigation based upon arguments over adequacy of notice.

Mr. Timothy Pack proposed adding a committee note. Michael Petrogeorge proposed that a committee note state that the most effective way to give notice of the terms is by supplying a copy of the injunction. Judge Scott questioned why a copy of the injunction should not be given to show notice was given.

Leslie Slaugh proposed that a copy of the injunction be sent with the complaint as well as allowing the injunction to be in effect upon notice. Based upon a straw poll, the majority of the committee approved of this idea. Rod Andreason proposed that the rule state “notice of the terms of the injunction, in person, through counsel, or otherwise.”

Mr. Andreason moved to approve his proposed language in (d)(2), Barbara Townsend seconded the motion. The motion passed, with two votes dissenting.

Judge Stone pointed out that a party could serve without filing, and that there would not be an injunction then. This would then bind the respondent but not the petitioner. Michael Petrogeorge proposed changing paragraph (d)(2) to state “after filing of the petition and upon notice.” Judge Stone proposed adding “a copy of the injunction or this rule.” Lauren DiFrancesco and Heather Sneddon noted that all instances of “petition” in the rule should be modified by “initial.” Mr. Andreason moved to approve paragraphs (e) and (d). James Hunnicutt seconded. The motion passed.

Commissioner Blomquist mentioned that ORS was concerned that they would be required to serve this kind of notice, too, so the subcommittee proposed adding “this rule applies to all parties other than the Office of Recovery Services.”

Timothy Pack proposed a concern about paragraph (g) with respect to modifying or dissolving the injunction within a certain time frame. He said there may be no need for an additional hearing. Commissioner Blomquist pointed out that the expedited hearing provision was based upon constitutional concerns. Judge Stone requested that the rule go to the Board of District Court Judges for purposes of hearing from judges in districts without domestic commissioners on the timing of the hearing. Commissioner Blomquist proposed changing the language to copy Rule 65A. Mr. Hunnicutt questioned if a hearing should be required. Trystan Smith proposed the language, “the Court shall determine a motion to modify as expeditiously as possible.”

Ms. Vogel pointed out that the language regarding speaking about the issues of the petition may be overly broad. Judge Stone was concerned that this blocks people from talking to their teenagers about reasonable things. Judge Stone proposed eliminating (c)(2)(B) and adding “or unduly involve the child in the issues in the petition” to (c)(2)(C). Mr. Andreason was concerned that this would not practically bind them to anything. Mr. Hunnicutt expressed concern that the qualifier “unduly” would invite abuses and pointed out that domestic orders proscribed parents from involving children in divorce issues without such qualifying language. The committee was slightly in favor of keeping in the word “unduly.”

Ms. Sneddon moved to approve the rule as stated below. Ms. DiFrancesco seconded. The motion passed with Mr. Hunnicutt opposing. Mr. Hunnicutt expressed support for Rule 109, but opposed it based on the inclusion of “unduly.”

Rule 109. Automatic injunction in certain domestic relations cases.

(a) **Actions in which an automatic domestic injunction enters.** In an action for divorce, annulment, temporary separation, custody, parent time, support, or paternity, an injunction automatically enters when the initial petition is filed. The injunction contains the applicable provisions of this rule.

(b) **General provisions.**

(b)(1) If the action concerns the division of property then neither party may transfer, encumber, conceal, or dispose of any property of either party without the written consent of the other party or an order of the court, except in the usual course of business or to provide for the necessities of life.

(b)(2) Neither party may disturb the peace of the other party or harass, annoy, or bother the other party.

(b)(3) Neither party may commit domestic violence or abuse against the other party or a child.

(b)(4) Neither party may use the other party’s name, likeness, image, or identification to obtain credit, open an account for service, or obtain a service.

(b)(5) Neither party may cancel or interfere with telephone, utility, or other services used by the other party.

(b)(6) Neither party may cancel, modify, terminate, change the beneficiary, or allow to lapse for voluntary nonpayment of premiums, any policy of health insurance, homeowner's or renter's insurance, automobile insurance, or life insurance without the written consent of the other party or pursuant to further order of the court.

(c) **Provisions regarding a minor child.** The following provisions apply when a minor child is a subject of the petition:

- (c)(1) Neither party may engage in non-routine travel with the child without the written consent of the other party or an order of the court unless the following information has been provided to the other party:
- (c)(1)(A) an itinerary of travel dates and destinations;
 - (c)(1)(B) how to contact the child or traveling party; and
 - (c)(1)(C) the name and telephone number of an available third person who will know the child's location.
- (c)(2) Neither party may do the following in the presence or hearing of the child:
- (c)(2)(A) demean or disparage the other party;
 - (c)(2)(B) attempt to influence a child's preference regarding custody or parent time; or
 - (c)(2)(C) say or do anything that would tend to diminish the love and affection of the child for the other party, or unduly involve the child in the issues of the petition.
- (c)(3) Neither party may make parent time arrangements through the child.
- (c)(4) When the child is under the party's care, the party has a duty to use best efforts to prevent third parties from doing what the parties are prohibited from doing under this order or the party must remove the child from those third parties.
- (d) **When the injunction is binding.** The injunction is binding
- (d)(1) on the petitioner upon filing the initial petition; and
 - (d)(2) on the respondent after filing of the initial petition and upon notice of the terms of the injunction in person, through counsel, or otherwise.
- (e) **Copy of the injunction or this rule.** A copy of the injunction or this rule shall be served on the respondent and all joined parties with the initial petition.
- (f) **When the injunction terminates.** The injunction remains in effect until the final decree is entered, the petition is dismissed, the parties agree otherwise in a writing signed by all parties, or further order of the court.
- (g) **Modifying or dissolving the injunction.** A party may move to modify or dissolve the injunction.
- (g)(1) Prior to a responsive pleading being filed, the court shall determine a motion to modify or dissolve the injunction as expeditiously as possible. The moving party must serve the nonmoving party at least 48 hours before a hearing.
 - (g)(2) After a responsive pleading is filed, a motion to modify or to dissolve the injunction is governed by Rule 7 or Rule 101, as applicable.
- (h) **Separate conflicting order.** Any separate order governing the parties or their minor children will control over conflicting provisions of this injunction.
- (i) **Applicability.** This rule applies to all parties other than the Office of Recovery Services.

(3) RULES 101 AND 105 AND SB 25.

Ms. Sylvester explained that the Legislature had reduced the divorce waiting period from 90 to 30 days in SB 25. This affected Rules 101 and 105. Mr. Andreason moved to amend the rules to reflect the changes below. Ms. Vogel seconded. The motion passed unanimously

Rule 105. Shortening ~~90~~ 30 day waiting period in domestic matters.

A motion for a hearing less than ~~90~~ 30 days from the date the petition was filed shall be accompanied by an affidavit setting forth the date on which the petition for divorce was filed and the facts constituting extraordinary circumstances.

Rule 101. Motion practice before court commissioners.

(a) Written motion required. An application to a court commissioner for an order must be by motion which, unless made during a hearing, must be made in accordance with this rule. A motion must be in writing and state succinctly and with particularity the relief sought and the grounds for the relief sought. Any evidence necessary to support the moving party's position must be presented by way of one or more affidavits or declarations or other admissible evidence. The moving party may also file a supporting memorandum.

(b) Time to file and serve. The moving party must file the motion and any supporting papers with the clerk of the court and obtain a hearing date and time. The moving party must serve the responding party with the motion and supporting papers, together with notice of the hearing at least 28 days before the hearing. If service is more than 90 days after the date of entry of the most recent appealable order, service may not be made through counsel.

(c) Response. Any other party may file a response, consisting of any responsive memorandum, affidavit(s) or declaration(s). The response must be served on the moving party at least 14 days before the hearing.

(d) Reply. The moving party may file a reply, consisting of any reply memorandum, affidavit(s) or declaration(s). The reply must be served on the responding party at least 7 days before the hearing. The contents of the reply must be limited to rebuttal of new matters raised in the response to the motion.

(e) Counter motion. Responding to a motion is not sufficient to grant relief to the responding party. A responding party may request affirmative relief by way of a counter motion. A counter motion need not be limited to the subject matter of the original motion. All of the provisions of this rule apply to counter motions except that a counter motion must be served with the response. Any response to the counter motion must be served no later than the reply to the motion. Any reply to the response to the counter motion must be served at least 3 business days before the hearing. The reply must be served in a manner that will cause the reply to be actually received by the party responding to the counter motion (i.e. hand-delivery, fax or other electronic delivery as allowed by rule or agreed by the parties) at least 3 business days before the hearing. A separate notice of hearing on counter motions is not required.

(f) Necessary documentation. Motions and responses regarding temporary orders concerning alimony, child support, division of debts, possession or disposition of assets, or litigation expenses, must be accompanied by verified financial declarations with documentary income verification attached as exhibits, unless financial declarations and documentation are already in the court's file and remain current. Attachments for motions and responses regarding child support and child custody must also include a child support worksheet.

(g) No other papers. No moving or responding papers other than those specified in this rule are permitted.

(h) Exhibits; objection to failure to attach.

(h)(1) Except as provided in paragraph (h)(3) of this rule, any documents such as tax returns, bank statements, receipts, photographs, correspondence, calendars, medical records, forms, or photographs must be supplied to the court as exhibits to one or more affidavits (as appropriate) establishing the necessary foundational requirements. Copies of court papers such as decrees, orders, minute entries, motions, or affidavits, already in the court's case file, may not be filed as exhibits. Court papers from cases other than that before the court, such as protective orders, prior divorce decrees, criminal orders, information or dockets, and juvenile court orders (to the extent the law does not prohibit their filing), may be submitted as exhibits.

(h)(2) If papers or exhibits referred to in a motion or necessary to support the moving party's position are not served with the motion, the responding party may file and serve an objection to the defect with the response. If papers or exhibits referred to in the response or necessary to support the responding party's position are not served with the response, the moving party may file and serve an objection to the defect with the reply. The defect must be cured within 2 business days after notice of the defect or at least 3 business days before the hearing, whichever is earlier.

(h)(3) Voluminous exhibits which cannot conveniently be examined in court may not be filed as exhibits, but the contents of such documents may be presented in the form of a summary, chart or calculation under Rule 1006 of the Utah Rules of Evidence. Unless they have been previously supplied through discovery or otherwise and are readily identifiable, copies of any such voluminous documents must be supplied to the other parties at the time of the filing of the summary, chart or calculation. The originals or duplicates of the documents must be available at the hearing for examination by the parties and the commissioner. Collections of documents, such as bank statements, checks, receipts, medical records, photographs, e-mails, calendars and journal entries, that collectively exceed ten pages in length must be presented in summary form. Individual documents with specific legal significance, such as tax returns, appraisals, financial statements and reports prepared by an accountant, wills, trust documents, contracts, or settlement agreements must be submitted in their entirety.

(i) Length. Initial and responding memoranda may not exceed 10 pages of argument without leave of the court. Reply memoranda may not exceed 5 pages of argument without leave of the court. The total number of pages submitted to the court by each party may not exceed 25 pages, including affidavits, attachments and summaries, but excluding financial declarations and income verification. The court commissioner may permit the party to file an over-length memorandum upon ex parte application and showing of good cause.

(j) Late filings; sanctions. If a party files or serves papers beyond the time required in this rule, the court commissioner may hold or continue the hearing, reject the papers, impose costs and attorney fees caused by the failure and by the continuance, and impose other sanctions as appropriate.

(k) Limit on order to show cause. An application to the court for an order to show cause may be made only for enforcement of an existing order or for sanctions for violating an existing order. An application for an order to show cause must be supported by affidavit or other evidence sufficient to show cause to believe a party has violated a court order.

(l) Hearings.

(1)(1) The court commissioner may not hold a hearing on a motion for temporary orders before the deadline for an appearance by the respondent under Rule 12.

(1)(2) Unless the court commissioner specifically requires otherwise, when the statement of a person is set forth in an affidavit, declaration or other document accepted by the commissioner, that person need not be present at the hearing. The statements of any person not set forth in an affidavit, declaration or other acceptable document may not be presented by proffer unless the person is present at the hearing and the commissioner finds that fairness requires its admission.

(m) Motions to judge. The following motions must be to the judge to whom the case is assigned: motion for alternative service; motion to waive ~~90~~30-day waiting period; motion to waive divorce education class; motion for leave to withdraw after a case has been certified as ready for trial; and motions in limine. A court may provide that other motions be considered by the judge.

(4) RULE 4. STANDARDS FOR ELECTRONIC ACCEPTANCE OF SERVICE: ASSIGNMENT OF SUBCOMMITTEE.

Mr. Hafen appointed Justin Toth as chair of the subcommittee on electronic acceptance of service. The Board of District Court judges had requested that there be some standards created for electronic acceptance of service. The subcommittee will meet with the providers separately to discuss the technology capabilities. Judge Stone reported that the judges are concerned about knowing that the correct person is accepting service. Susan Vogel had concerns about process servers mimicking court notices. Susan Vogel, Judge Scott and Lauren DiFrancesco volunteered for the subcommittee.

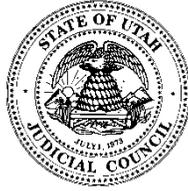
(5) RULE 26(A)(5). PRETRIAL DISCLOSURES.

Mr. Slaugh reported that Judge Holmberg proposed adding objections to witnesses in lines 108 and 109 of Rule 26. Mr. Andreason believed that this was left out accidentally. Judge Stone expressed concerns that you cannot waive objections if you do not know what witnesses are going to say. Mr. Hunnicutt stated the reason for the rule was an objection to the appearance of certain witnesses in one of his cases before Judge Holmberg. Judge Stone proposed waiting until the committee heard from Judge Holmberg on the proposed change.

(6) ADJOURNMENT

The meeting adjourned at 6 p.m. The next meeting will be held on April 25, 2018 at 4 p.m.

Tab 2

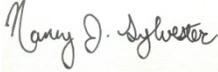


Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

MEMORANDUM

Richard H. Schwermer
State Court Administrator
Raymond H. Wahl
Deputy Court Administrator

To: Civil Rules Committee
From: Nancy Sylvester 
Date: April 24, 2018
Re: Rule 4 Acceptance of Service and Electronic Delivery of Documents

[Rule 4](#) of the Utah Rules of Civil Procedure governs service of process. In some cases, personal service is not required if a party accepts “service of a summons and complaint by signing a document that acknowledges receipt of the summons and complaint.” UTAH R. CIV. P. 4(d)(3)(B). “A person who accepts service of the summons and complaint retains all defenses and objections, except for adequacy of service. Service is effective on the date of the acceptance. Filing the acceptance of service with the court constitutes proof of service under Rule 4(e).” UTAH R. CIV. P. 4(d)(3)(D).

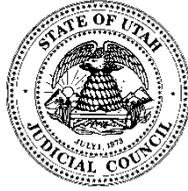
Acceptance of service replaced the waiver of service provisions previously found in the rule. Part of the reason for this was that the committee was approached by a process server who had come up with a way of serving the summons and complaint via a secure portal. The committee drafted the following note to the rule to convey that electronic delivery and signature was a method contemplated by the acceptance of service provisions: “Paragraph (d)(3) contemplates delivery and acceptance of the summons and complaint by various methods, including electronic delivery and signature.”

Because there is now more than one company engaging in this method of service, the Board of District Court Judges has requested that this committee study and work on establishing standards in Rule 4 with respect to electronic acceptance of service.

Jonathan and I took this issue to the Supreme Court. The Court discussed the need for disclaimers (“I am a process server, not a government official.”), ensuring that a person clearly knows they are engaged in service of a complaint, and how this new process aligns with the Federal Communications Act when SMS are sent. They were also very interested in the concerns about impersonating a government website or official. In further discussions with several judges, including Judge Stone, another need appears to be requiring the process server to outline the process of verifying the served person’s identity in the acceptance of service document.

**The mission of the Utah judiciary is to provide the people an open, fair,
efficient, and independent system for the advancement of justice under the law.**

Tab 3

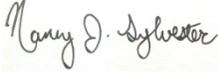


Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

MEMORANDUM

Richard H. Schwermer
State Court Administrator
Raymond H. Wahl
Deputy Court Administrator

To: Civil Rules Committee
From: Nancy Sylvester 
Date: March 23, 2018
Re: Rule 5 and orders served by the court

At the Civil Rules Committee's January meeting, the committee made edits to Rule 5, the idea of which is to have the court serve all orders, but not to sweep in too many minute entries or non-substantive or dispositive orders. Chairman Jonathan Hafen and I asked the committee to vet the proposed language with the committee's contacts and/or offer other suggestions on language. Dawn Hautamaki vetted the language with the clerks of court and their feedback is attached. Committee member Mike Petrogeorge also offered the following perspective:

I would propose that the court be required to serve every "memorandum decision or order". Sometimes the courts include the order in the memorandum decision but sometimes courts issue a memorandum decision and in that decision require the prevailing party to prepare a separate order. I think all parties should be served with any substantive ruling whether or not it is styled as an order and adding the memorandum decision language would help strike the balance in avoiding minute entry and other mundane rulings.

Additionally, to address the concern of increased workload for court clerks and as a preliminary step before pro se e-filing, the committee proposed adopting a policy of requiring the provision of an email address to the court by all civil litigants.

Attached is proposed new CJA Rule 4-511, as well as Civil Rule 10, to which I have made a conforming amendment. Both the Board of District Court Judges and the Board of Justice Court Judges have seen the proposals and weighed in; the Self-Help Center also provided feedback, as well as several staff members of the Administrative Office. The rules reflect the groups' and individuals' feedback.

The mission of the Utah judiciary is to provide the people an open, fair, efficient, and independent system for the advancement of justice under the law.

1 **Rule 5. Service and filing of pleadings and other papers.**

2 **(a) When service is required.**

3 **(a)(1) Papers that must be served.** Except as otherwise provided in these rules or as otherwise
4 directed by the court, the following papers must be served on every party:

5 (a)(1)(A) a judgment;

6 (a)(1)(B) an signed order that states it must be served of the court other than a non-final oral
7 directive memorialized in a minute entry;

8 (a)(1)(C) a pleading after the original complaint;

9 (a)(1)(D) a paper relating to disclosure or discovery;

10 (a)(1)(E) a paper filed with the court other than a motion that may be heard ex parte; and

11 (a)(1)(F) a written notice, appearance, demand, offer of judgment, or similar paper.

12 **(a)(2) Serving parties in default.** No service is required on a party who is in default except that:

13 (a)(2)(A) a party in default must be served as ordered by the court;

14 (a)(2)(B) a party in default for any reason other than for failure to appear must be served as
15 provided in paragraph (a)(1);

16 (a)(2)(C) a party in default for any reason must be served with notice of any hearing to
17 determine the amount of damages to be entered against the defaulting party;

18 (a)(2)(D) a party in default for any reason must be served with notice of entry of judgment
19 under Rule [58A\(gd\)](#); and

20 (a)(2)(E) a party in default for any reason must be served under Rule [4](#) with pleadings
21 asserting new or additional claims for relief against the party.

22 **(a)(3) Service in actions begun by seizing property.** If an action is begun by seizing property
23 and no person is or need be named as defendant, any service required before the filing of an answer,
24 claim or appearance must be made upon the person who had custody or possession of the property
25 when it was seized.

26 **(b) How service is made.**

27 **(b)(1) Whom to serve.** If a party is represented by an attorney, a paper served under this rule
28 must be served upon the attorney unless the court orders service upon the party. Service must be
29 made upon the attorney and the party if

30 (b)(1)(A) an attorney has filed a Notice of Limited Appearance under Rule [75](#) and the papers
31 being served relate to a matter within the scope of the Notice; or

32 (b)(1)(B) a final judgment has been entered in the action and more than 90 days has elapsed
33 from the date a paper was last served on the attorney.

34 **(b)(2) When to serve.** If a hearing is scheduled 7 days or less from the date of service, a party
35 must serve a paper related to the hearing by the method most likely to be promptly received.
36 Otherwise, a paper that is filed with the court must be served before or on the same day that it is filed.

37 **(b)(3) Methods of service.** A paper is served under this rule by:

38 (b)(3)(A) except in the juvenile court, submitting it for electronic filing, or the court submitting it
39 to the electronic filing service provider, if the person being served has an electronic filing account;

40 (b)(3)(B) emailing it to the email address provided by the person in compliance with Code of
41 Judicial Administration Rule 4-511 and Civil Rule 10(a)(3) unless the person is exempted, or to

42 | the email address on file with the Utah State Bar, ~~if the person has agreed to accept service by~~
 43 | ~~email or has an electronic filing account;~~

44 | (b)(3)(C) mailing it to the person's last known address;

45 | (b)(3)(D) handing it to the person;

46 | (b)(3)(E) leaving it at the person's office with a person in charge or, if no one is in charge,
 47 | leaving it in a receptacle intended for receiving deliveries or in a conspicuous place;

48 | (b)(3)(F) leaving it at the person's dwelling house or usual place of abode with a person of
 49 | suitable age and discretion who resides there; or

50 | (b)(3)(G) any other method agreed to in writing by the parties.

51 | **(b)(4) When service is effective.** Service by mail or electronic means is complete upon sending.

52 | **(b)(5) Who serves.** Unless otherwise directed by the court:

53 | (b)(5)(A) every paper required to be served must be served by the party preparing it; and

54 | (b)(5)(B) ~~every ruling, decision, or memorandum decision or order of the court that is to be~~
 55 | ~~served under this rule shall be served by the court on the parties. every paper prepared by the~~
 56 | ~~court will be served by the court.~~

57 | **(c) Serving numerous defendants.** If an action involves an unusually large number of defendants,
 58 | the court, upon motion or its own initiative, may order that:

59 | (c)(1) a defendant's pleadings and replies to them do not need to be served on the other defendants;

60 | (c)(2) any cross-claim, counterclaim avoidance or affirmative defense in a defendant's pleadings and
 61 | replies to them are deemed denied or avoided by all other parties;

62 | (c)(3) filing a defendant's pleadings and serving them on the plaintiff constitutes notice of them to all
 63 | other parties; and

64 | (c)(4) a copy of the order must be served upon the parties.

65 | **(d) Certificate of service.** A paper required by this rule to be served, including electronically filed
 66 | papers, must include a signed certificate of service showing the name of the document served, the date
 67 | and manner of service and on whom it was served. Except in the juvenile court, this paragraph does not
 68 | apply to papers required to be served under paragraph (b)(5)(B) when service to all parties is made under
 69 | paragraph (b)(3)(A).

70 | **(e) Filing.** Except as provided in Rule [7\(j\)](#) and Rule [26\(f\)](#), all papers after the complaint that are
 71 | required to be served must be filed with the court. Parties with an electronic filing account must file a
 72 | paper electronically. A party without an electronic filing account may file a paper by delivering it to the
 73 | clerk of the court or to a judge of the court. Filing is complete upon the earliest of acceptance by the
 74 | electronic filing system, the clerk of court or the judge.

75 | **(f) Filing an affidavit or declaration.** If a person files an affidavit or declaration, the filer may:

76 | (f)(1) electronically file the original affidavit with a notary acknowledgment as provided by Utah
 77 | Code Section [46-1-16\(7\)](#);

78 | (f)(2) electronically file a scanned image of the affidavit or declaration;

79 | (f)(3) electronically file the affidavit or declaration with a conformed signature; or

80 | (f)(4) if the filer does not have an electronic filing account, present the original affidavit or
 81 | declaration to the clerk of the court, and the clerk will electronically file a scanned image and return
 82 | the original to the filer.

83 The filer must keep an original affidavit or declaration of anyone other than the filer safe and available
84 for inspection upon request until the action is concluded, including any appeal or until the time in which to
85 appeal has expired.

86 [Advisory Committee Notes](#)

1 **Rule 4-511. Mandatory email address.**

2 **Intent:**

3 To require that all civil litigants provide a valid email address to the court for service by the court of
4 court orders and court notices.

5 To provide for an exception.

6 **Applicability:**

7 This rule applies in the district, juvenile, and justice courts.

8 **Statement of the Rule:**

9 (1) Except as provided in Paragraph (3), on or after November 1, 2018, all civil litigants shall provide
10 a valid email address to the court for service by the court of court orders and notices under Rule of Civil
11 Procedure 5.

12 (2) A litigant who provides their email address pursuant to Rule of Civil Procedure 10(a)(3) will be
13 deemed to have complied with this rule.

14 (3)(A) A self-represented party who certifies they are unable to use or access email on a regular basis
15 is exempt from this requirement.

16 (3)(B) To request an exemption, the party shall submit to the Clerk of Court a written certification
17 pursuant to paragraph (3)(A).

18 (4) Except as provided in paragraph (3), a civil litigant who fails to provide a valid email address in
19 compliance with this rule or Rule of Civil Procedure 10(a)(3) may...[consequence?]

1 **Rule 10. Form of pleadings and other papers.**

2 **(a) Caption; names of parties; other necessary information.**

3 (a)(1) All pleadings and other papers filed with the court must contain a caption setting forth the
4 name of the court, the title of the action, the file number, if known, the name of the pleading or other
5 paper, and the name, if known, of the judge (and commissioner if applicable) to whom the case is
6 assigned. A party filing a claim for relief, whether by original claim, counterclaim, cross-claim or third-
7 party claim, must include in the caption the discovery tier for the case as determined under Rule 26.

8 (a)(2) In the complaint, the title of the action must include the names of all the parties, but other
9 pleadings and papers need only state the name of the first party on each side with an indication that
10 there are other parties. A party whose name is not known must be designated by any name and the
11 words "whose true name is unknown." In an action in rem, unknown parties must be designated as
12 "all unknown persons who claim any interest in the subject matter of the action."

13 (a)(3) Every pleading and other paper filed with the court must state in the top left hand corner of
14 the first page the name, address, valid email address pursuant to Code of Judicial Administration
15 Rule 4-511, telephone number and bar number of the attorney or party filing the paper, and, if filed by
16 an attorney, the party for whom it is filed.

17 (a)(4) A party filing a claim for relief, whether by original claim, counterclaim, cross-claim or third-
18 party claim, must also file a completed cover sheet substantially similar in form and content to the
19 cover sheet approved by the Judicial Council. The clerk may destroy the coversheet after recording
20 the information it contains.

21 **(b) Paragraphs; separate statements.** All statements of claim or defense must be made in
22 numbered paragraphs. Each paragraph must be limited as far as practicable to a single set of
23 circumstances; and a paragraph may be adopted by reference in all succeeding pleadings. Each claim
24 founded upon a separate transaction or occurrence and each defense other than denials must be stated
25 in a separate count or defense whenever a separation facilitates the clear presentation of the matters set
26 forth.

27 **(c) Adoption by reference; exhibits.** Statements in a paper may be adopted by reference in a
28 different part of the same or another paper. An exhibit to a paper is a part thereof for all purposes.

29 **(d) Paper format.** All pleadings and other papers, other than exhibits and court-approved forms, must
30 be 8½ inches wide x 11 inches long, on white background, with a top margin of not less than 1½ inches
31 and a right, left and bottom margin of not less than 1 inch . All text or images must be clearly legible, must
32 be double spaced, except for matters customarily single spaced, must be on one side only and must not
33 be smaller than 12-point size.

34 **(e) Signature line.** The name of the person signing must be typed or printed under that person's
35 signature. If a proposed document ready for signature by a court official is electronically filed, the order
36 must not include the official's signature line and must, at the end of the document, indicate that the
37 signature appears at the top of the first page.

38 **(f) Non-conforming papers.** The clerk of the court may examine the pleadings and other papers filed
39 with the court. If they are not prepared in conformity with paragraphs (a) - (e), the clerk must accept the
40 filing but may require counsel to substitute properly prepared papers for nonconforming papers. The clerk
41 or the court may waive the requirements of this rule for parties appearing pro se. For good cause shown,
42 the court may relieve any party of any requirement of this rule.

43 **(g) Replacing lost pleadings or papers.** If an original pleading or paper filed in any action or
44 proceeding is lost, the court may, upon motion, with or without notice, authorize a copy thereof to be filed
45 and used in lieu of the original.

46 **(h) No improper content.** The court may strike and disregard all or any part of a pleading or other
47 paper that contains redundant, immaterial, impertinent or scandalous matter.

48 **(i) Electronic papers.**

49 (i)(1) Any reference in these rules to a writing, recording or image includes the electronic version
50 thereof.

51 (i)(2) A paper electronically signed and filed is the original.

52 (i)(3) An electronic copy of a paper, recording or image may be filed as though it were the
53 original. Proof of the original, if necessary, is governed by the [Utah Rules of Evidence](#).

54 (i)(4) An electronic copy of a paper must conform to the format of the original.

55 (i)(5) An electronically filed paper may contain links to other papers filed simultaneously or
56 already on file with the court and to electronically published authority.

57 [Advisory Committee Notes](#)

58



Nancy Sylvester <nancyjs@utcourts.gov>

Fwd: Rule 5 Proposed Language/Feedback Needed

2 messages

Dawn Hautamaki <dawnh@utcourts.gov>
To: Nancy Sylvester <nancyjs@utcourts.gov>

Hi Nancy,

I did send the info out to the CoCs for comment. I have only received a few comments back. All comments received are included below. Thanks!

Loni Page

to me

I haven't responded because I have nothing new to offer, nor anything particular helpful to say about something that I completely disagree with! You already know my stance on all of that but I'm while to implement though.

Thank you for keeping us in the know on these potential changes.

Mikelle Ostler

to me, Loni, Peggy, Keri, Christine, Tracy, Debbie, Alyson, Brooke, Chris, Gary, Lynn, Kristen, Kristene

Very interesting! Do *your* Judges sign the minutes for Juvenile cases? Our Bench asked us to start adding "Prepared and electronically submitted by the Judicial Assistant without judicial review", for one, am okay with the court serving parties with copies of the orders signed by the Judge. It was a bit of a change of process initially with our child welfare orders but I think it makes sense.

Mikelle Ostler
Clerk of Court
Fourth District Juvenile Court
801-318-4026

Ms. Hautamaki,

Thank you for the update and the insight regarding potential changes. Do Judges *sign* minute entries in District Court? I am wondering if that could be the distinction. Judges don't sign the minutes, they have signed it. (Don't get me started.)

08-30-2017	Minutes - Judge: mnoonan - Approved: 09-01-2017	CW - Review: 08-30-2017 11:00 AM	9
08-30-2017	Other Legal	Review Order (Proposed)	9
08-30-2017	School Report	School Credit Report	9
08-24-2017	Court Reports	DCFS Therapist Letter	9

-Mikelle

Tracy Walker

to me

I think the wording changes are better than what we had when it said orders "issued" by the court.

Thanks Dawn!

Tracy J. Walker - Clerk of Court
Silver Summit, Tooele, West Jordan
8080 South Redwood Rd., Suite 1701
West Jordan, UT 84088
801.233.9771
tracyw@utcourts.gov

----- Forwarded message -----
From: **Lynn Wiseman** <lynnw@utcourts.gov>
Date: Mon, Feb 5, 2018 at 8:12 AM
Subject: Re: Rule 5 Proposed Language/Feedback Needed
To: Dawn Hautamaki <dawnh@utcourts.gov>

Hi Dawn :)

The only other thing I can think of to set things apart might be to work in (and I am still going to think on this, this is just off the top of my head) the idea that the court be responsible to serve or "initiated" by the parties.

(And now that I re-read that first line, I wonder if my thinking takes this a step backward from where the committee wants to be).

But that is my two cents :)

Lynn Wiseman
Clerk of Court
2nd District Juvenile Court
801-334-4779 (Office)
801-920-3640 (Cell)

lynnw@utcourts.gov

For eFiling questions, please contact vanessat@utcourts.gov and visit the website <http://www.utcourts.gov/efiling/juvenile/>.

On Mon, Feb 5, 2018 at 7:44 AM, Dawn Hautamaki <dawnh@utcourts.gov> wrote:

At our Rules of Civil Procedure Committee meeting on January 24, 2018 Rule 5 was again the hot topic. Some proposed language has been drafted and I have been asked to run it past the C draft it. The idea is to have the court serve all orders but they don't want to sweep in too many minute entries that don't matter as much as, say, an order on a motion to dismiss. The rule chan

The committee will be taking this up again at our meeting February 25th. **Nancy needs any language edits no later than February 21.**

Judge Stone will also be taking this to the Board of District Court Judges.

In addition, Nancy will be drafting some proposed language for the Policy and Planning Committee regarding requiring email addresses for litigants (or making it a rebuttable presumption?) the have language suggestions on that, **please send those to me by February 21.**

Rule 4-503. Mandatory electronic filing.

Intent:

To require that documents in district court civil cases be filed electronically.

To provide for exceptions.

Applicability:

This rule applies in the district court.

Statement of the Rule:

(1) Except as provided in Paragraph (2), pleadings and other papers filed in civil cases in the district court on or after April 1, 2013 shall be electronically filed using the electronic filer's inter

(2)(A) A self-represented party who is not a lawyer may file pleadings and other papers using any means of delivery permitted by the court.

(2)(B) A lawyer whose request for a hardship exemption from this rule has been approved by the Judicial Council may file pleadings and other papers using any means of delivery permitted the exemption is necessary to the District Court Administrator.

(2)(C) Pleadings and other papers in probate cases may be filed using any means of delivery permitted by the court until July 1, 2013, at which time they shall be electronically filed using the

(3) The electronic filer shall be an attorney of record and shall use a unique and personal identifier that is provided by the filer's service provider.

Thanks! I look forward to your feedback.

--

Dawn Hautamaki

Clerk of Court

8th District & Juvenile Court

920 East Hwy 40

Vernal, UT 84078

(435) 781.9303 / office

(435) 790.0942 / cell

--

Dawn Hautamaki

Clerk of Court

8th District & Juvenile Court

920 East Hwy 40

Vernal, UT 84078

(435) 781.9303 / office

(435) 790.0942 / cell

Nancy Sylvester <nancyjs@utcourts.gov>
To: Dawn Hautamaki <dawnh@utcourts.gov>

Wed, Feb 21, 2018 at 2:40 PM

Thanks, Dawn!

[Quoted text hidden]

--

Nancy J. Sylvester

Associate General Counsel

Administrative Office of the Courts

450 South State Street

P.O. Box 140241

Salt Lake City, Utah

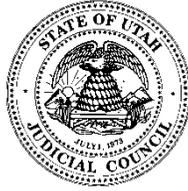
84114-0241

Phone: (801) 578-3808

Fax: (801) 578-3843

nancyjs@utcourts.gov

Tab 4



Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

MEMORANDUM

Richard H. Schwermer
State Court Administrator
Raymond H. Wahl
Deputy Court Administrator

To: Civil Rules Committee
From: Nancy Sylvester
Date: April 25, 2018
Re: Legislative Updates

A handwritten signature in black ink that reads "Nancy D. Sylvester". The signature is written in a cursive style and is positioned to the right of the "From:" field.

The Legislature passed three bills in 2018 that appear to affect the Civil Rules: [SB 188](#) (Rules 4(e), 11(a)(2), 55(b)(1)(D), and 63(b)(1)), [SB 171 \(Rule 24\)](#), and [SB 92 \(Rule 73\)](#).

In SB 188, the Legislature enacted the Uniform Unsworn Declarations Act and in so doing, repealed Utah Code section 78B-5-705. Rules 4, 11, 55, and 63 all reference Utah Code section 78B-5-705. In each rule, I replaced that language with "unsworn declaration as described in Title 78B, Chapter 18a, Uniform Unsworn Declarations Act," which I took directly from the bill at lines 141-142.

SB 171 addresses the Legislature's ability to unconditionally intervene in litigation when the constitutionality of a statute is challenged. Rule 24 addresses that situation and we have a subcommittee currently assigned to study the rule with respect to attorney general intervention when the constitutionality of a statute is challenged. I recommend that the subcommittee look at amending the rule to provide the process for the attorney general to "notify the legislative general counsel of a claim in accordance with Subsection 67-5-1(24)."

SB 92 deals with the awarding of reasonable attorney fees in accordance with and to the extent allowed by Supreme Court rule. This also already seems to fit within Rule 73, so I recommend no change.

**The mission of the Utah judiciary is to provide the people an open, fair,
efficient, and independent system for the advancement of justice under the law.**

1 **Rule 4. Process.**

2 **(a) Signing of summons.** The summons must be signed and issued by the plaintiff or the plaintiff's
3 attorney. Separate summonses may be signed and issued.

4 **(b) Time of service.** Unless the summons and complaint are accepted, a copy of the summons and
5 complaint in an action commenced under Rule 3(a)(1) must be served no later than 120 days after the
6 complaint is filed, unless the court orders a different period under Rule 6. If the summons and complaint
7 are not timely served, the action against the unserved defendant may be dismissed without prejudice on
8 motion of any party or on the court's own initiative.

9 **(c) Contents of summons.**

10 (c)(1) The summons must:

11 (c)(1)(A) contain the name and address of the court, the names of the parties to the action,
12 and the county in which it is brought;

13 (c)(1)(B) be directed to the defendant;

14 (c)(1)(C) state the name, address and telephone number of the plaintiff's attorney, if any, and
15 otherwise the plaintiff's address and telephone number;

16 (c)(1)(D) state the time within which the defendant is required to answer the complaint in
17 writing;

18 (c)(1)(E) notify the defendant that in case of failure to answer in writing, judgment by default
19 will be entered against the defendant; and

20 (c)(1)(F) state either that the complaint is on file with the court or that the complaint will be
21 filed with the court within 10 days after service.

22 (c)(2) If the action is commenced under Rule 3(a)(2), the summons must also:

23 (c)(2)(A) state that the defendant need not answer if the complaint is not filed within 10 days
24 after service; and

25 (c)(2)(B) state the telephone number of the clerk of the court where the defendant may call at
26 least 14 days after service to determine if the complaint has been filed.

27 (c)(3) If service is by publication, the summons must also briefly state the subject matter and the
28 sum of money or other relief demanded, and that the complaint is on file with the court.

29 **(d) Methods of service.** The summons and complaint may be served in any state or judicial district
30 of the United States. Unless service is accepted, service of the summons and complaint must be by one
31 of the following methods:

32 **(d)(1) Personal service.** The summons and complaint may be served by any person 18 years of
33 age or older at the time of service and not a party to the action or a party's attorney. If the person to
34 be served refuses to accept a copy of the summons and complaint, service is sufficient if the person
35 serving them states the name of the process and offers to deliver them. Personal service must be
36 made as follows:

37 (d)(1)(A) Upon any individual other than one covered by paragraphs (d)(1)(B), (d)(1)(C) or
38 (d)(1)(D), by delivering a copy of the summons and complaint to the individual personally, or by
39 leaving them at the individual's dwelling house or usual place of abode with a person of suitable
40 age and discretion who resides there, or by delivering them to an agent authorized by
41 appointment or by law to receive process;

42 (d)(1)(B) Upon a minor under 14 years old by delivering a copy of the summons and
43 complaint to the minor and also to the minor's father, mother, or guardian or, if none can be found
44 within the state, then to any person having the care and control of the minor, or with whom the
45 minor resides, or by whom the minor is employed;

46 (d)(1)(C) Upon an individual judicially declared to be incapacitated, of unsound mind, or
47 incapable of conducting the individual's own affairs, by delivering a copy of the summons and
48 complaint to the individual and to the guardian or conservator of the individual if one has been
49 appointed; the individual's legal representative if one has been appointed, and, in the absence of
50 a guardian, conservator, or legal representative, to the person, if any, who has care, custody, or
51 control of the individual;

52 (d)(1)(D) Upon an individual incarcerated or committed at a facility operated by the state or
53 any of its political subdivisions, by delivering a copy of the summons and complaint to the person
54 who has the care, custody, or control of the individual, or to that person's designee or to the
55 guardian or conservator of the individual if one has been appointed. The person to whom the
56 summons and complaint are delivered must promptly deliver them to the individual;

57 (d)(1)(E) Upon a corporation not otherwise provided for in this rule, a limited liability company,
58 a partnership, or an unincorporated association subject to suit under a common name, by
59 delivering a copy of the summons and complaint to an officer, a managing or general agent, or
60 other agent authorized by appointment or law to receive process and by also mailing a copy of
61 the summons and complaint to the defendant, if the agent is one authorized by statute to receive
62 process and the statute so requires. If no officer or agent can be found within the state, and the
63 defendant has, or advertises or holds itself out as having, a place of business within the state or
64 elsewhere, or does business within this state or elsewhere, then upon the person in charge of the
65 place of business;

66 (d)(1)(F) Upon an incorporated city or town, by delivering a copy of the summons and
67 complaint as required by statute, or in the absence of a controlling statute, to the recorder;

68 (d)(1)(G) Upon a county, by delivering a copy of the summons and complaint as required by
69 statute, or in the absence of a controlling statute, to the county clerk;

70 (d)(1)(H) Upon a school district or board of education, by delivering a copy of the summons
71 and complaint as required by statute, or in the absence of a controlling statute, to the
72 superintendent or administrator of the board;

73 (d)(1)(I) Upon an irrigation or drainage district, by delivering a copy of the summons and
74 complaint as required by statute, or in the absence of a controlling statute, to the president or
75 secretary of its board;

76 (d)(1)(J) Upon the state of Utah or its department or agency by delivering a copy of the
77 summons and complaint to the attorney general and any other person or agency required by
78 statute to be served; and

79 (d)(1)(K) Upon a public board, commission or body by delivering a copy of the summons and
80 complaint as required by statute, or in the absence of a controlling statute, to any member of its
81 governing board, or to its executive employee or secretary.

82 **(d)(2) Service by mail or commercial courier service.**

83 (d)(2)(A) The summons and complaint may be served upon an individual other than one
84 covered by paragraphs (d)(1)(B) or (d)(1)(C) by mail or commercial courier service in any state or
85 judicial district of the United States provided the defendant signs a document indicating receipt.

86 (d)(2)(B) The summons and complaint may be served upon an entity covered by paragraphs
87 (d)(1)(E) through (d)(1)(I) by mail or commercial courier service in any state or judicial district of
88 the United States provided defendant's agent authorized by appointment or by law to receive
89 service of process signs a document indicating receipt.

90 (d)(2)(C) Service by mail or commercial courier service shall be complete on the date the
91 receipt is signed as provided by this rule.

92 **(d)(3) Acceptance of service.**

93 **(d)(3)(A) Duty to avoid expenses.** All parties have a duty to avoid unnecessary expenses of
94 serving the summons and complaint.

95 **(d)(3)(B) Acceptance of service by party.** Unless the person to be served is a
96 minor under 14 years old or an individual judicially declared to be incapacitated, of unsound mind,
97 or incapable of conducting the individual's own affairs, a party may accept service of a summons
98 and complaint by signing a document that acknowledges receipt of the summons and complaint.

99 **(d)(3)(C) Acceptance of service by attorney for party.** An attorney may accept service of a
100 summons and complaint on behalf of the attorney's client by signing a document that acknowledges
101 receipt of the summons and complaint.

102 **(d)(3)(D) Effect of acceptance, proof of acceptance.** A person who accepts service of the
103 summons and complaint retains all defenses and objections, except for adequacy of service. Service
104 is effective on the date of the acceptance. Filing the acceptance of service with the court constitutes
105 proof of service under Rule 4(e).

106 **(d)(4) Service in a foreign country.** Service in a foreign country must be made as follows:

107 (d)(4)(A) by any internationally agreed means reasonably calculated to give notice, such as
108 those means authorized by the Hague Convention on the Service Abroad of Judicial and
109 Extrajudicial Documents;

110 (d)(4)(B) if there is no internationally agreed means of service or the applicable international
111 agreement allows other means of service, provided that service is reasonably calculated to give
112 notice:

113 (d)(4)(B)(i) in the manner prescribed by the law of the foreign country for service in that
114 country in an action in any of its courts of general jurisdiction;

115 (d)(4)(B)(ii) as directed by the foreign authority in response to a letter of request issued
116 by the court; or

117 (d)(4)(B)(iii) unless prohibited by the law of the foreign country, by delivering a copy of the
118 summons and complaint to the individual personally or by any form of mail requiring a signed
119 receipt, addressed and dispatched by the clerk of the court to the party to be served; or

120 (d)(4)(C) by other means not prohibited by international agreement as may be directed by the
121 court.

122 **(d)(5) Other service.**

123 (d)(5)(A) If the identity or whereabouts of the person to be served are unknown and cannot
124 be ascertained through reasonable diligence, if service upon all of the individual parties is
125 impracticable under the circumstances, or if there is good cause to believe that the person to be
126 served is avoiding service, the party seeking service may file a motion to allow service by some
127 other means. An affidavit or declaration supporting the motion must set forth the efforts made to
128 identify, locate, and serve the party, or the circumstances that make it impracticable to serve all of
129 the individual parties.

130 (d)(5)(B) If the motion is granted, the court will order service of the complaint and summons
131 by means reasonably calculated, under all the circumstances, to apprise the named parties of the
132 action. The court's order must specify the content of the process to be served and the event upon
133 which service is complete. Unless service is by publication, a copy of the court's order must be
134 served with the process specified by the court.

135 (d)(5)(C) If the summons is required to be published, the court, upon the request of the party
136 applying for service by other means, must designate a newspaper of general circulation in the
137 county in which publication is required.

138 **(e) Proof of service.**

139 (e)(1) The person effecting service must file proof of service stating the date, place, and manner of
140 service, including a copy of the summons. If service is made by a person other than by an attorney,
141 sheriff, constable, United States Marshal, or by the sheriff's, constable's or marshal's deputy, the
142 proof of service must be by affidavit or ~~declaration under penalty of Utah Code~~
143 ~~Section 78B-5-705~~ unsworn declaration as described in Title 78B, Chapter 18a, Uniform Unsworn
144 Declarations Act.

145 (e)(2) Proof of service in a foreign country must be made as prescribed in these rules for service
146 within this state, or by the law of the foreign country, or by order of the court.

147 (e)(3) When service is made pursuant to paragraph(d)(4)(C), proof of service must include a
148 receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the
149 court.

150 (e)(4) Failure to file proof of service does not affect the validity of the service. The court may allow
151 proof of service to be amended.

152 **Advisory Committee Notes**

153

154

1 **Rule 11. Signing of pleadings, motions, affidavits, and other papers; representations to**
2 **court; sanctions.**

3 **(a) Signature.**

4 (a)(1) Every pleading, written motion, and other paper must be signed by at least one attorney of
5 record, or, if the party is not represented, by the party.

6 (a)(2) A person may sign a paper using any form of signature recognized by law as binding.
7 Unless required by statute, a paper need not be accompanied by affidavit or have a notarized,
8 verified or acknowledged signature. If a rule requires an affidavit or a notarized, verified or
9 acknowledged signature, the person may submit ~~a declaration pursuant to Utah Code~~
10 ~~Section 78B-5-705~~ an unsworn declaration as described in Title 78B, Chapter 18a, Uniform Unsworn
11 Declarations Act. If an affidavit or a paper with a notarized, verified or acknowledged signature is
12 filed, the party must comply with Rule [5\(f\)](#).

13 (a)(3) An unsigned paper will be stricken unless omission of the signature is corrected promptly
14 after being called to the attention of the attorney or party.

15 **(b) Representations to court.** By presenting a pleading, written motion, or other paper to the court
16 (whether by signing, filing, submitting, or advocating), an attorney or unrepresented party is certifying that
17 to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under
18 the circumstances,

19 (b)(1) it is not being presented for any improper purpose, such as to harass or to cause
20 unnecessary delay or needless increase in the cost of litigation;

21 (b)(2) the claims, defenses, and other legal contentions are warranted by existing law or by a
22 nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment
23 of new law;

24 (b)(3) the allegations and other factual contentions have evidentiary support or, if specifically so
25 identified, are likely to have evidentiary support after a reasonable opportunity for further investigation
26 or discovery; and

27 (b)(4) the denials of factual contentions are warranted on the evidence or, if specifically so
28 identified, are reasonably based on a lack of information or belief.

29 **(c) Sanctions.** If, after notice and a reasonable opportunity to respond, the court determines that
30 paragraph (b) has been violated, the court may, subject to the conditions stated below, impose an
31 appropriate sanction upon the attorneys, law firms, or parties that have violated paragraph (b) or are
32 responsible for the violation.

33 **(c)(1) How initiated.**

34 **(c)(1)(A) By motion.** A motion for sanctions under this rule must be made separately from
35 other motions or requests and must describe the specific conduct alleged to violate
36 paragraph (b). It must be served as provided in Rule [5](#), but may not be filed with or presented to
37 the court unless, within 21 days after service of the motion (or such other period as the court may

38 prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn
39 or appropriately corrected. If warranted, the court may award to the party prevailing on the motion
40 the reasonable expenses and attorney fees incurred in presenting or opposing the motion. In
41 appropriate circumstances, a law firm may be held jointly responsible for violations committed by
42 its partners, members, and employees.

43 **(c)(1)(B) On court's initiative.** On its own initiative, the court may enter an order describing
44 the specific conduct that appears to violate paragraph (b) and directing an attorney, law firm, or
45 party to show cause why it has not violated paragraph (b) with respect thereto.

46 **(c)(2) Nature of sanction; limitations.** A sanction imposed for violation of this rule must be
47 limited to what is sufficient to deter repetition of such conduct or comparable conduct by others
48 similarly situated. Subject to the limitations in paragraphs (c)(2)(A) and (c)(2)(B), the sanction may
49 consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if
50 imposed on motion and warranted for effective deterrence, an order directing payment to the movant
51 of some or all of the reasonable attorney fees and other expenses incurred as a direct result of the
52 violation.

53 (c)(2)(A) Monetary sanctions may not be awarded against a represented party for a violation
54 of paragraph (b)(2).

55 (c)(2)(B) Monetary sanctions may not be awarded on the court's initiative unless the court
56 issues its order to show cause before a voluntary dismissal or settlement of the claims made by
57 or against the party which is, or whose attorneys are, to be sanctioned.

58 **(c)(3) Order.** When imposing sanctions, the court will describe the conduct determined to
59 constitute a violation of this rule and explain the basis for the sanction imposed.

60 [Advisory Committee Notes](#)

61

62

63

1 **Rule 55. Default.**

2 **(a) Entry.** When a party against whom a judgment for affirmative relief is sought has failed to plead or
3 otherwise defend as provided by these rules and that fact is made to appear the clerk shall enter the
4 default of that party.

5 **(b) Judgment.** Judgment by default may be entered as follows:

6 **(b)(1) By the clerk.** When the plaintiff's claim against a defendant is for a sum certain, upon
7 request of the plaintiff the clerk shall enter judgment for the amount claimed and costs against the
8 defendant if:

9 (b)(1)(A) the default of the defendant is for failure to appear;

10 (b)(1)(B) the defendant is not an infant or incompetent person;

11 (b)(1)(C) the defendant has been personally served pursuant to Rule [4\(d\)\(1\)](#); and

12 (b)(1)(D) the plaintiff, through a verified complaint, an affidavit, or an unsworn declaration as
13 described in Title 78B, Chapter 18a, Uniform Unsworn Declarations Act, ~~declaration under~~
14 ~~Section 78B-5-705~~ submitted in support of the default judgment, sets forth facts necessary to
15 establish the amount of the claim, after deducting all credits to which the defendant is entitled,
16 and verifies the amount is warranted by information in the plaintiff's possession.

17 **(b)(2) By the court.** In all other cases the party entitled to a judgment by default shall apply to the
18 court therefor. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary
19 to take an account or to determine the amount of damages or to establish the truth of any averment
20 by evidence or to make an investigation of any other matter, the court may conduct such hearings or
21 order such references as it deems necessary and proper.

22 **(c) Setting aside default.** For good cause shown the court may set aside an entry of default and, if a
23 judgment by default has been entered, may likewise set it aside in accordance with Rule [60\(b\)](#).

24 **(d) Plaintiffs, counterclaimants, cross-claimants.** The provisions of this rule apply whether the
25 party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a
26 cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of Rule [54\(c\)](#).

27 **(e) Judgment against the state or officer or agency thereof.** No judgment by default shall be
28 entered against the state of Utah or against an officer or agency thereof unless the claimant establishes
29 his claim or right to relief by evidence satisfactory to the court.

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1 **Rule 63. Disability or disqualification of a judge.**

2 **(a) Substitute judge; Prior testimony.** If the judge to whom an action has been assigned is unable
3 to perform his or her duties, then any other judge of that district or any judge assigned pursuant to
4 Judicial Council rule is authorized to perform those duties. The judge to whom the case is reassigned
5 may rehear the evidence or some part of it.

6 **(b) Motion to disqualify; affidavit or declaration.**

7 (b)(1) A party to an action or the party's attorney may file a motion to disqualify a judge. The
8 motion must be accompanied by a certificate that the motion is filed in good faith and must be
9 supported by an affidavit or unsworn declaration as described in Title 78B, Chapter 18a, Uniform
10 Unsworn Declarations Act~~declaration under penalty of Utah Code Section 78B-5-705~~ stating facts
11 sufficient to show bias, prejudice or conflict of interest. The motion must also be accompanied by a
12 request to submit for decision.

13 (b)(2) The motion must be filed after commencement of the action, but not later than 21 days after
14 the last of the following:

15 (b)(2)(A) assignment of the action or hearing to the judge;

16 (b)(2)(B) appearance of the party or the party's attorney; or

17 (b)(2)(C) the date on which the moving party knew or should have known of the grounds
18 upon which the motion is based.

19 If the last event occurs fewer than 21 days before a hearing, the motion must be filed as soon as
20 practicable.

21 (b)(3) Signing the motion or affidavit or declaration constitutes a certificate under Rule 11 and
22 subjects the party or attorney to the procedures and sanctions of Rule 11.

23 (b)(4) No party may file more than one motion to disqualify in an action, unless the second or
24 subsequent motion is based on grounds that the party did not know of and could not have known of at
25 the time of the earlier motion.

26 (b)(5) If timeliness of the motion is determined under paragraph (b)(2)(C) or paragraph (b)(4), the
27 affidavit or declaration supporting the motion must state when and how the party came to know of the
28 reason for disqualification.

29 **(c) Reviewing judge.**

30 (c)(1) The judge who is the subject of the motion must, without further hearing or a response from
31 another party, enter an order granting the motion or certifying the motion and affidavit or declaration
32 to a reviewing judge. The judge must take no further action in the case until the motion is decided. If
33 the judge grants the motion, the order will direct the presiding judge of the court to assign another
34 judge to the action or hearing. Assignment in justice court cases will be in accordance with Utah Code
35 of Judicial Administration Rule 9-109. The presiding judge of the court, any judge of the district, or any
36 judge of a court of like jurisdiction may serve as the reviewing judge.

37 (c)(2) If the reviewing judge finds that the motion and affidavit or declaration are timely filed, filed
38 in good faith and legally sufficient, the reviewing judge shall assign another judge to the action or

39 hearing or request the presiding judge to do so. Assignment in justice court cases will be in
40 accordance with Utah Code of Judicial Administration Rule 9-109.

41 (c)(3) In determining issues of fact or of law, the reviewing judge may consider any part of the
42 record of the action and may request of the judge who is the subject of the motion an affidavit or
43 declaration responding to questions posed by the reviewing judge.

44 (c)(4) The reviewing judge may deny a motion not filed in a timely manner.

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